Tan Guek Tian and Anor v Tan Kim Kiat @ Chua Kim Kiat

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S6–24–2506 OF 2006
ABDUL MALIK ISHAK J
22 FEBRUARY 2007

Mental Disorders and Treatment — Estate of lunatic — Of patient's property — Appliction pursuant to the Mental Health Act 2001 — Plaintiffs to be appointed committee of the defendant and his estate

Mental Disorders and Treatment — Estate of lunatic — Of patient's property — Jurisdiction — Plaintiffs and defendant Singaporean — Property in Malaysia

The plaintiffs and defendant were all Singaporeans. The second plaintiff was the wife of the defendant, whilst the first plaintiff was the defendant's second daughter. The first plaintiff currently resides with the second plaintiff in Singapore. The first plaintiff deposes in her affidavit that she is the only daughter who resides with her parents before her father, the defendant, was admitted to a nursing home. The defendant's three other daughters no longer reside with their mother after marriage. The defendant was a retired bank officer and he had been put in a dementia specific nursing home in Singapore since March 2005 because his wife, could no longer cope with his schizophrenic behaviour at home, a condition diagnosed since 1964 despite being treated by a private psychiatrist. The plaintiffs applied in encl 1 under and pursuant to the Mental Health Act 2001 ('the Act'), inter alia, for the defendant to be declared mentally disordered and incapable of managing his personal affairs; and that the plaintiffs be appointed committee of the defendant and his estate and that the committee be at liberty to sell the defendant's 3/18 undivided share of the property situated in Melaka ('the said land') at such price and time to be determined by them in consultation with the remaining registered owners. The defendant's family members had given their express consent to file the present application in this court.

Held:

(1) Since the said land was situated in Malacca, this court had the co-ordinate jurisdiction with the High Court of Malacca to adjudicate enclosure one. Notwithstanding the fact that the plaintiffs and the defendant are citizens of Singapore, the plaintiffs have filed their application in this court and this court invoked s 52 of the Act (see para 16).

(2) The consent by all the defendant's family members and the undertaking by the plaintiffs towards the defendant's maintenance neutralises or negates any

possibility of family disputes relating to the present application as well as the defendant's 3/18 share in the said land in the foreseeable future. At this juncture, the court invoked s 62 of the Act in favour of the plaintiffs (see para 18).

(3) There was also no necessity for this court to direct an inquiry to determine whether the defendant was incapable of managing himself and his affairs due to his mental disorder because the High Court of Singapore had via an order dated 24 August 2005 declared the defendant to be of unsound mind and incapable of managing himself and his affairs. The High Court of Singapore made an order, inter alia, that the defendant was of 'unsound mind' in the context of the Singapore's Mental Disorders and Treatment Act (Cap 178, 1985 Ed) and it carries the same meaning as the term 'mental disorder' that appeared in s 2 of our Act (see para 19).

(4) Although s 70(a) of the Act had been fulfilledbut paragraph (b) had not been fulfilled because the said land was not in Singapore and the order of the High Court of Singapore was only confined to the HDB flat. It appeared that s 70 was inapplicable and cannot be invoked in favour of the plaintiffs. However, this court is empowered under s 58 to appoint a committee of the person and estate of the defendant and towards this end, the prayer that that the plaintiffs be appointed committee of the defendant and his estate would be relevant (see para 23).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan kesemuanya warganegara Singapura. Plaintif kedua adalah isteri kepada defendan, sementara plaintif pertama adalah anak perempuan kedua defendan. Plaintif pertama tinggal bersama ibunya di Singapura. Plaintif pertama menyatakan di dalam afidavitnya bahawa beliau merupakan satu-satunya anak perempuan yang tinggal dengan ibu bapanya sebelum bapanya, defendan, dimasukkan ke rumah penjagaan. Ketiga-tiga anak perempuan defendan yang lain tidak lagi tinggal bersama dengan ibu mereka oleh kerana mereka mempunyai keluarga mereka sendiri. Defendan merupakan seorang pegawai bank yang telah bersara dan beliau telah tinggal di sebuah rumah penjagaan khas untuk demensia di Singapura semenjak Mac 2005 oleh kerana plaintif kedua, isterinya sudah tua, dan tidak berupaya lagi berdepan dengan kelakuannya yang skizofrenia, satu penyakit yang didiagnosis sejak 1964 walaupun sedang dirawat oleh psikiatri sendirian. Plaintif-plaintif memohon di kandungan satu di bawah dan menurut Akta Kesihatan Mental 2001 ('Akta tersebut'), antara yang lain untuk defendan diisytiharkan sebagai tidak siuman dan tidak mampu untuk mengendalikan diri sendiri dan hal ehwal dirinya; dan bahawa plaintif-plaintif dilantik sebagai jawatankuasa defendan dan estetnya dan bahawa jawatankuasa tersebut dibenarkan untuk menjual 3/18 bahagian tidak dibahagi harta di Melaka ('harta tanah')pada harga dan masa yang akan ditentukan oleh mereka setelah berunding dengan pemilik-pemilik berdaftar yang lain. Ahli-ahli keluarga defendan juga telah memberi persetujuan mereka secara nyata untuk pemfailan permohonan ini di mahkamah.

Diputuskan:

(1) Oleh kerana tanah tersebut berlokasi di Melaka, mahkamah ini mempunyai bidangkuasa setara dengan bidangkuasa mahkamah tinggi Melaka untuk mengadili kandungan satu. Walaupun fakta bahawa plaintif-plaintif dan defendan adalah warganegara Singapura, plaintif-plaintif telah memfailkan permohonan mereka di mahkamah ini dan mahkamah ini menggunakan s 52 Akta tersebut (lihat perenggan 16).

(2) Kebenaran daripada kesemua ahli-ahli keluarga defendan dan akujanji oleh plaintif-plaintif berhubungan dengan penyenggaraan defendan meneutralkan atau menyangkal sebarang kemungkinan pertikaian keluarga berhubung dengan permohonan ini dan juga bahagian 3/18 defendan di hartanah tersebut pada masa hadapan. Dalam saat ini, mahkamah menggunakan s 62 Akta tersebut memihak kepada plaintif-plaintif (lihat perenggan 18).

(3) Tiada keperluan juga untuk mahkamah ini mengarahkan satu penyiasatan untuk memastikan sama ada defendan tidak berkemampuan mengendalikan diri sendiri dan hal ehwal dirinya disebabkan oleh gangguan mental oleh kerana mahkamah tinggi Singapura telah melalui perintah bertarikh 24 Ogos 2005 mengisytiharkan defendan sebagai tidak siuman dan tidak mampu untuk mengendalikan diri sendiri dan hal ehwal dirinya. Mahkamah Tinggi Singapura membuat perintah tersebut, di antara yang lain, bahawa defendan 'tidak siuman' dalam konteks Akta Gangguan Mental dan Rawatan Singapura (Cap 178, 1985 Ed) dan ia membawa maksud yang sama dengan 'tidak siuman' di dalam s 2 Akta tersebut (lihat perenggan 19).

(4) Walaupun s 70(a) Akta tersebut telah dipenuhi, tetapi perenggan (b) masih belum lagi dipenuhi oleh kerana hartanah tersebut bukannya di Singapura dan perintah Mahkamah Tinggi Singapura adalah terhad kepada flat HDB. Nampaknya s 70 adalah tidak terpakai dan tidak dapat digunakan untuk memihak plaintif-plaintif. Akan tetapi, mahkamah ini mempunyai kuasa di bawah s 58 untuk melantik satu jawatankuasa untuk orang dan estet defendan dan dengan ini, permohonan bahawa plaintif-plaintif dilantik sebagai jawatankuasa defendan dan estetnya adalah relevan (lihat perenggan 23).]

Notes

For a case on estate of lunatic, of patient's property, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 391.

Cases referred to

B v Croydon Health Authority [1995] Fam 133 (refd)
B (a minor), Re [1988] AC 199 (refd)
D (a minor), Re [1976] Fam 185 (refd)
Eve, Re [1981] 115 DLR (3d) 283; 31 DLR (4d) 1 (refd)
F, Re [1990] 2 AC 1 (refd)
GF, Re [1993] 4 Med LR 77 (refd)
H (a mental patient), Re [1993] 4 Med LR 91 (refd)
Kanbi Kurji [1960] Cr LJ 1200; 1 Guj LR 27 (refd)
Lakshman Dagdu [1886] 10 Bom 512 (refd)

Muhammad Hussain [1912] 15 OC 321: 14 Cr LJ 81 (refd)
Nga Kan Hla [1914] 2 UBR 28; 16 Cr LJ 95; [1914] AIR (UB) 31 (refd)
R v Bournemouth Community and Mental Health NHS Trust [1997] Times, 8 December (refd)
R v Kirkless Metropolitan Borough Council, ex p C (a minor) [1993] 2 FLR 187 (refd)
See Wan Chon v Chua Ka Bu [1990] 2 MLJ 460 (refd)
T, Re, T v T [1988] Fam 52 (refd)
Y (mental patient: bone marrow donation), Re [1997] Fam 110 (refd)

Legislation referred to
Mental Disorders and Treatment Act [Sing]
Mental Health Act 1983 [UK] ss 62, 63
Mental Health Act 2001 ss 2, 51, 52, 53, 54, 55, 58, 62, 63, 64, 70
Penal Code s 84

Brian Ernest Cumming (Tay & Partners) for the plaintiffs.

Abdul Malik Ishak J:

INTRODUCTION

[1] I am dealing with a rare application under and pursuant to the Mental Health Act 2001 (Act 615). It is couched in encl 1 where the plaintiffs both of whom are Singaporeans, seek for the following orders in relation to the person and estate affairs of the defendant, another Singaporean:

(i) that service of all the documents pertaining to the application herein on the other surviving relatives or next of kin of the above named Tan Kim Kiat @ Chua Kim Kiat be dispensed with;

(ii) that the medical doctor's attendance at the inquiry be dispensed with and his or her affidavit be admitted as evidence;

(iii) that the said Tan Kim Kiat @ Chua Kim Kiat (Singapore NRIC No S0310710 H) be declared mentally disordered and incapable of managing his person and affairs;

(iv) that Tan Guek Tian (f) (Singapore NRIC No S 1357897 D) and Kam Mui Lan (f) (Singapore NRIC No S 0689788 F) be appointed committee of the person and estate of Tan Kim Kiat @ Chua Kim Kiat (Singapore NRIC No S 0310710 H) pursuant to s 58 of the Mental Health Act 2001 (Act 615);

(v) that the committee be at liberty to sell Tan Kim Kiat @ Chua Kim Kiat's 3/18 undivided share of the property situated on Lot 10, GRN 22278, Pekan Klebang, Seksyen IV, Daerah Melaka Tengah, Negeri Melaka (hereinafter referred to as 'the said land') at such price and time to be determined by them in consultation with the remaining registered owners;

(vi) that the committee be empowered in his name and on his behalf, to execute all such conveyances and instruments of transfer in relation to any sale, charge

and/or other disposition of the said land and/or estate of the said Tan Kim Kiat @ Chua Kim Kiat (Singapore NRIC No S 0310710 H) to any purchaser the committee deems fit;

(vii) that the committee be and is at liberty to receive all purchase monies thereof and give good and valid receipts thereof;

(viii) that the proceeds of sale of such estate and/or land be utilised towards payment of the expenses for the maintenance of Tan Kim Kiat @ Chua Kim Kiat and that of his family;

(ix) that the plaintiffs be at liberty to apply; and

(x) such further and/or other relief deems fit and appropriate by this Honourable Court.

FACTUAL BACKGROUND

[2] The second plaintiff by the name of Kam Mui Lan is aged 72 and she is the wife of the defendant who is aged 76, whilst the first plaintiff is the defendant's second daughter. The defendant has three other daughters, namely, Monica Tan Guek Liew, Elaine Chua Guek Chun and Patricia Chua Guek Eng. The first plaintiff currently resides with her mother at No 4, Lorong M, Telok Kurau, #02–02, Singapore. The first plaintiff deposes in her affidavit in encl 2 that she is the only daughter who resides with her parents before her father, the defendant, was admitted to a nursing home. The defendant's three other daughters no longer stay with their mother since they have families of their own.

[3] The defendant is a retired bank officer and he has been residing in a dementia specific nursing home known as Apex Harmony Lodge in Singapore since March 2005 because his elderly wife, the second plaintiff, could no longer cope with his schizoprenic behaviour at home, a condition he had been diagnosed with since 1964 despite being treated by a private psychiatrist. The defendant is susceptible to bouts of irritation, restlessness and agitation. The medical report of the defendant from Dr Ng Li Ling of the Changi General Hospital in Singapore dated 21 April 2005 which is exhibited as exh 'TGT–2' of encl 2 makes for an interesting reading material. It reads as follows:

Chairman Medical Board

Singapore 529889

Changi General Hospital

MEDICAL REPORT ON TAN KIM KIAT NRIC: S 0310710 H

I refer to your letter dated 23 Mar 2005 requesting for a medical report.

The above-named was first seen at the Division of Psychological Medicine, Changi General Hospital on 22 Oct 2004 for a psychiatric assessment.

Mr Tan is a retired bank officer who was diagnosed as suffering from schizophrenia in 1964 when he presented with auditory hallucinations and paranoid ideas. A private psychiatrist had been treating him, but despite treatment he was reported to have had several relapses.

According to his family, over the last three years he had become progressively forgetful. He also wandered and got lost, as he did not know the way home. In addition he complained of being persecuted and heard voices of people trying to harm him. There was also a one-month history of episodes of confusion that was suggestive of epileptic seizures.

He was admitted for investigations from 22 Oct 2004 to 27 Oct 2004. On assessment cognitive deficits were detected, however a CT scan of the brain did not reveal any abnormalities. On follow-up he became disturbed and was admitted from 5 Jan 2005 to 8 Feb 2005 for treatment of a relapse of schizophrenia. While in the ward he was agitated, aggressive and uncooperative. He was treated with electro-convulsive therapy and improved.

Unfortunately he became agitated again and was re-admitted on 25 Feb 2005 for stabilisation. During this admission, he was reported to be irritable, restless and was fiddling with furniture. He was also accusing his family of taking his belongings and his wife no longer able to care for him. During this admission, he was diagnosed as suffering from dementia with underlying schizophrenia and treatment for his dementia was started. As his wife was not able to manage him, he was transferred to a nursing home when he was discharged on 14 Mar 2005.

Mr Tan was reviewed on 16 April 2005 for the purpose of writing this medical report. When seen he was alert and responsive. He was relevant to questions and was able to identify his wife and daughter correctly. However he insisted that he was staying at home when in fact he had been staying in a nursing home. He was unable to give his address accurately and kept repeating 'Drive 4' when asked about personal details. Although he was able to give details of his immediate family members, he was unable to give the details of his bank accounts. Cognitive assessment revealed that he was not orientated to time and had impairments in his short-term memory.

In summary, Mr Tan Kim Kiat is suffering from dementia with schizophrenia, and focal epilepsy. In my opinion, he is of unsound mind as set out in the Mental Disorders and Treatment Act, and is incapable of managing himself or his affairs. It is unlikely that he will recover from his dementia.

Yours sincerely,

(Sgd Illegible)

Dr Ng Li-Ling

Senior Consultant

Psychological Medicine.

[4] The defendant has had several relapses and he has progressively become more forgetful over the past three years. He complains of being persecuted and hears voices of people purportedly trying to harm him. He has also wandered off from home aimlessly and does not know the way home prior to his admission into the nursing home.

[5] Between 22 October 2004 to 27 October 2004, the defendant was admitted into the Changi General Hospital in Singapore for assessment and the doctor there found the defendant to have cognitive defects. On follow up treatment, the defendant became disturbed and he was re-admitted into the same hospital between 5 January 2005 to 8 February 2005 for treatment of a relapse of schizophrenia where

he was reported to be agitated, aggressive and uncooperative. So, electro-convulsive therapy was prescribed and his condition improved for a few days. That did not last long because on 25 February 2005, the defendant had to be re-admitted for stabilisation when he became agitated, once again, despite treatment. The defendant was diagnosed as suffering from dementia with underlying schizophrenia and exhibited symptoms of restlessness, irritation and continuously fiddled with furniture. Upon discharge, the defendant was admitted into the said nursing home by his family members.

[6] On 16 April 2005, by way of a subsequent review, the doctor did a cognitive assessment of the defendant and found that he had impairments in his short term memory and was not orientated. The defendant insisted that he lived at home with his family members when in fact he had been residing in a nursing home since March. Although the defendant was able to identify his wife and daughter, he could not give his address correctly nor could he answer questions about his personal details. Dr Ng Li Ling, a senior consultant of psychological medicine at the Changi General Hospital in Singapore found that the defendant to be suffering from dementia with schizophrenia and focal epilepsy. The good doctor is of the opinion that the defendant is of unsound mind and incapable of managing his affairs. According to the good doctor, the defendant is unlikely to recover from his dementia. Section 84 of the Penal Code enacts as follows:

> 84. Act of a person of unsound mind
>
> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

[7] This section is of great importance. It lays down the legal test of responsibility in cases of unsoundness of mind. It is by this test that the criminality of an act is determined. It is certainly different from the medical test (*Lakshman Dagdu* [1886] 10 Bom 512; *Nga Kan Hla* [1914] 2 UBR 28; 16 Cr LJ 95; [1914] AIR (UB) 31; and *Kanbi Kurji* [1960] Cr LJ 1200; 1 Guj LR 27). Only the legally insane is protected from criminal responsibility. Thus, an insane person who *'is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law'* would be exempted from criminal responsibility. According to the case of *Muhammad Hussain* [1912] 15 OC 321; 14 Cr LJ 81, a person who by reason of mental disease is prevented from controlling his own conduct and a person who is deprived by disease affecting his mind of the power of passing a rational judgment on the moral character of the act he meant to do, is entitled to seek refuge under this section. And under this section too, an accused person is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. Fortunately, in deciding the fate of the application in encl one, I am spared the difficult task of deciding the defendant's mental state under s 84 of the Penal Code.

[8] Reverting back to the mainstream of the factual matrix, the defendant's rising nursing home and medical expenses put a heavy strain on the family finances as their

only source of income were the second plaintiff and the defendant's meagre savings and monthly contributions from the first plaintiff and her sisters. Upon the application of both the plaintiffs herein vide originating summons no 930/2005/B, the High Court of Singapore before Andrew Ang J, (see exh 'TGT–3' of encl 2), inter alia, declared the defendant to be of unsound mind and incapable of managing his person and affairs. Both the plaintiffs were appointed as committee of the person and estate of the defendant and they were granted the liberty to sell the Housing Development Board's flat at Block 482, Pasir Ris Drive 4, #07–399, Singapore 510482 ('HDB flat'). The HDB flat was held in the joint names of the defendant and the second plaintiff and the order of the Singapore's High Court was to enable the proceeds of the sale of the HDB flat to be utilised for purposes of maintaining the defendant and his family members. The HDB flat has since been sold and the proceeds utilised towards the defendant's maintenance at the nursing home and towards the purchase of a house by the second plaintiff at No 4, Lorong M, Telok Kurau #02-02, Singapore.

[9] In January 2006, the defendant attempted to punch and assault the nursing home staff with a pair of scissors and he was then admitted to the Singapore's Woodbridge Hospital, just like our Tanjong Rambutan Hospital, from 18 January 2006 to 27 February 2006. Medication was prescribed to reduce the defendant's agitation and aggression. The mental state examinations revealed that the defendant had vague paranoid ideas and poor recent memory.

[10] On 1 August 2006, Dr Chiam Peak Chiang, a senior consultant psychiatrist with the Institute of Mental Health, Woodbridge Hospital, Singapore examined the defendant and found him to be suffering from moderately severe dementia, a disease of the brain which impairs his intelligence, judgment and ability to care for himself. The defendant's condition was described by the good doctor as being irreversible and incurable and the defendant was found to be a mentally disordered person within the meaning of the Mental Disorders and Treatment Act (Cap 178, 1985 Ed). There is, unfortunately, no medical report from our Malaysian doctors on the mental health of the defendant. Perhaps there is some measure of immobility on the part of the defendant to travel to Malaysia and be examined by the Malaysian doctors bearing in mind that he is now a resident of the nursing home in Singapore. Hence, the present application in encl 1.

THE LEGAL SEMANTICS

[11] Serving through the internet at http://www.mentalhealth.org.my has been very educational. It states, inter alia, that the World Health Organisation ('WHO') makes a study and found that:

> Around 450 million people suffer from mental disorders. One in four families have at least one member with a mental disorder at any point in time. Mental illness accounts for 12% of the total burden of health.

[12] In the United Kingdom, by virtue of s 62 of the Mental Health Act 1983 urgent treatment may be given to a patient without his consent and it permits

treatment for the mental disorder from which the patient is suffering from, other than the more serious treatment, to be given to the patient without the patient's consent. In *B v Croydon Health Authority* [1995] Fam 133, a declaration was obtained from the Court of Appeal that tube-feeding a mental patient who was refusing to eat did not require her consent because it constituted 'medical treatment given for the mental disorder' from which she was suffering within the meaning of s 63 of the Mental Health Act 1983. But, another panel of the Court of Appeal made it crystal clear in *R v Bournemouth Community and Mental Health NHS Trust* [1997] Times, 8 December, that outside the provisions of the Mental Health Act 1983 permitting compulsory detention subject to stipulated procedures a mental patient could not be detained where he was not able to give consent to detention and no proper representative had given consent on his behalf. It appears that for the most serious treatment involving interference with the brain tissue or other serious treatments, the consent of the patient must be obtained. However, consent is not required if a second medical opinion advises that the treatment must be given. This brings me to the most disturbing question and that would be this: what if the patient is incapable of giving his/her consent to the most serious form of treatment for mental disorder or just for routine medical treatment unconnected with mental disorder? Must the court remain idle and not decide in favour of providing medical treatment without the consent of the patient. Heilbron J, in *Re D (a minor)* [1976] Fam 185 had to decide if the court should authorise the sterilisation of a mentally handicapped 11 year old girl. On the available evidence, his Lordship concluded that that was not an appropriate course and his Lordship further proceeded on the assumption that a parent could give consent for such an operation and, consequently, where the child was a ward of the court, the court could give that consent in lieu of the parent. Interestingly, it must be noted that the House of Lords in *Re B (a minor)* [1988] AC 199 upheld the order of the courts below who had authorised a sterilisation upon a severely mentally handicapped girl of 17. But the House of Lords expressly left undecided the question of whether any person or court could authorise or give consent to medical treatment on an adult who was not capable of giving consent by himself. Good news comes in the form of the judgment of Wood J, who decided the case of *Re T, T v T* [1988] Fam 52. There his Lordship authorised the termination of a pregnancy and ordered sterilisation to be performed on a severely handicapped girl aged 19. His Lordship succinctly said that as the law stood neither a parent or guardian nor the court nor any person appointed under the Mental Health Act 1983 could give a valid consent for the girl where the treatments authorised by the said Act were confined to psychiatric treatment. Going to Canada, the Canadian court in *Re Eve* [1981] 115 DLR (3d) 283; 31 DLR (4d) 1, held that it was possible for a parent to give consent to the sterilisation of a mentally retarded adult. Back again in the United Kingdom, the House of Lords in *Re F* [1990] 2 AC 1 decided that there was a rule at common law that a doctor was entitled, where the patient was unable to give consent, to carry out any treatment which was in the best interest of the patient and that the least interest of the patient were to be measured according to the classic Bolam test, namely, that if there was a responsible body of medical opinion that would have supported what the doctor did, then the doctor cannot be criticised. The following authorities are also germane to consider when adjudicating enclosure one (1), namely:

(a) in *Re GF* [1993] 4 Med LR 77, the court held that a declaration was not required for a medically indicated hysterectomy on a mentally handicapped adult;

(b) in *Re H (a mental patient)* [1993] 4 Med LR 91, the court held that a declaration should be refused to legitimise investigations for a brain tumour in a mentally handicapped 25 year old;

(c) in *R v Kirkless Metropolitan Borough Council, ex p C (a minor)* [1993] 2 FLR 187, the Court of Appeal decided that a local authority could give valid consent for a psychiatric admission in respect of a child in its care; and

(d) in *Re Y (mental patient: bone marrow donation)* [1997] Fam 110, the court authorised a bone marrow transplant from a mentally disordered adult to her sister who was, at that time, suffering from pre-leukemic bone marrow disorder.

THE MALAYSIAN POSITION

[13] The position in Malaysia is governed by the Mental Health Act 2001 (Act 615) and the long title to the said Act states as follows:

> An Act to consolidate the laws relating to mental disorder and to provide for the admission, detention, lodging, care, treatment, rehabilitation, control and protection of persons who are mentally disordered and for related matters.

Section 2 of the Mental Health Act 2001 (Act 615) defines 'mental disorder' in this way:

> 'mental disorder' means any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and 'mentally disordered' shall be construed accordingly.

Section 51 of the Mental Health Act 2001 (Act 615) defines 'mentally disordered person' as follows:

> 'mentally disordered person' means any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.

[14] Now, ss 52 to 55 of the Mental Health Act 2001 (Act 615) provides, inter alia, for the procedures and powers relating to the making of an order for an inquiry to determine whether a person subject to the jurisdiction of the court alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder upon an application made to it. In adjudicating encl 1, I rely solely on the medical reports of the Singapore doctors who have examined the defendant. I take note that the defendant is now resident of a nursing home in Singapore. I too take note that the defendant is the registered and legal owner of 3/18 share of the said land situated in Malacca. The other registered owners of the said land are Chua Siok Kim, Chua Kim Koon, Chua Kim Kuye @ Charles KK Chua, Chua Hood Chuan, Ong Siok Neo, Chua Leng Yan and Chua Kwee Huat. All together there are seven other co-owners. The co-owners of the undivided share of the said land are desirous of selling their respective shares in the said land to a purchaser by the name of Wong Tak Chong for RM341,237.26 subject to the condition that the defendant's share is

sold together. But the defendant is unable to comprehend the transaction and cannot sign the sale and purchase agreement due to his mental disorder. Hence, the present application in encl 1.

[15] It must be recalled that Dr Chiam Peak Chiang examined the defendant on 1 August 2006 and found, inter alia, that the defendant could not recall details of his properties and did not think that he owned anything else unless probed and questioned by his daughter. The defendant is certainly unable to make any decision in regard to the said land. The defendant is unable to decide about what to do with the said land. It is a pitiful state of affairs. He is incapable of managing himself and his affairs. He is mentally disordered.

[16] Since the said land is situated in Malacca, this court has the co-ordinate jurisdiction with the High Court of Malacca to adjudicate encl 1. The defendant's family members too have given their express consent to file the present application in this court (see exh 'TGT–1' of encl 2). Notwithstanding the fact that the plaintiffs and the defendant are citizens of Singapore, the plaintiffs have filed their application in this court and I must invoke s 52 of the Mental Health Act 2001 (Act 615) which enacts as follows:

> Court may order inquiry
>
> 52. (1) The Court may, on an application made before it, make an order directing an inquiry to determine whether a person subject to the jurisdiction of the Court and alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.
>
> (2) The order of the Court under subsection (1) may also contain directions for inquiries to be made concerning —
>
> (a) the nature of the property belonging to the person alleged to be mentally disordered;
>
> (b) the persons who are his relatives;
>
> (c) the period during which he has been mentally disordered; or
>
> (d) such other questions as the court deems proper.
>
> (3) The application for such an inquiry may be made by a relative of the person alleged to be mentally disordered, or by any public officer nominated by the Minister for the purpose of making the application.

[17] Both the plaintiffs hope to utilise the proceeds of the sale of the defendant's 3/18 share in the said land towards payment of the defendant's expenses in the nursing home and the necessary medical expenses. With the current exchange rate, the monetary gain would be minimal. Both the plaintiffs have given their undertaking to bear the defendant's nursing expenses and needs during his lifetime.

[18] I have the power to hear encl 1 and I ought to exercise my discretion and waive the requirement to serve the application in encl 1 on the defendant since his off-springs have expressly consented to their mother and sister to file the said

application. The consent by all the defendant's family members and the undertaking by the plaintiffs towards the defendant's maintenance neutralises or negates any possibility of family disputes relating to the present application as well as the defendant's 3/18 share in the said land in the foreseeable future. At this juncture, it is opportune for me to invoke s 62 of the Mental Health Act 2001 (Act 615) in favour of the plaintiffs and that section enacts as follows:

> Orders may be made on application
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> 62. Subject to this Act, the Court may, on an application made to it concerning any matter connected with an inquiry, make such order in respect of the application and the costs of the application and of the consequent proceedings as under the circumstances seem just but no order for costs shall be made under this section against any public officer.

[19] There is also no necessity for this court to direct an inquiry to determine whether the defendant is incapable of managing himself and his affairs due to his mental disorder because the High Court of Singapore had via an order dated 24 August 2005 through Justice Andrew Ang declared the defendant to be of unsound mind and incapable of managing himself and his affairs. Put in another way, there is already a finding of fact across the causeway that the defendant is mentally disordered and is incapable of managing himself and his affairs. The High Court of Singapore made an order, inter alia, that the defendant is of 'unsound mind' in the context of the Singapore's Mental Disorders and Treatment Act (Cap 178, 1985 Ed) and it carries the same meaning as the term 'mental disorder' that appears in s 2 of our Mental Health Act 2001 (Act 615). Chan Sek Keong J., (now the Chief Justice of Singapore) had this to say in *See Wan Chon v Chua Ka Bu* [1990] 2 MLJ 460 when confronted with the issue of deciding whether a person in a coma comes within the definition of 'unsound mind' under the Singapore's Mental Disorders and Treatment Act (Cap 178, 1985 Ed) (see p 462 of the report):

> I think this is an unsound argument. Although counsel is correct in submitting that the expression 'person of unsound mind' has the meaning of a 'lunatic' in the Lunacy Act of 1890 (see Devlin LJ in *Buxton v Jayne* [1960] 2 ALL ER 688 at p 697), that word meant an idiot or person of unsound mind. The word 'lunatic' was not confined to an 'idiot'. According to Lord Hardwicke LC in Barnsley's Case 2 Eq Ca Abr 580; [1745] 22 ER 489, 'Unsound mind' or insanae memoriae, which all persons must understand to be a depravity of reason or want of it. A person of unsound mind is non compos mentis in Latin. The common law recognises four classes of non compos mentis. In *Ex p Cranmer* [1806] 12 Ves 445; 33 ER 168, Lord Erskine L C at pp 450–452 said:
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> > Lord Coke in his commentary upon Littleton states what embraces every possible case: 'Here Littleton explaineth a man of no sound memory to be non compos mentis. Many times (as it here appeareth) the Latin word explaineth the true sense; and calleth him not amens, demens, furiosus lunaticus, fatuus, stultus, or the like; for 'non compos mentis' is most sure and legal.' Lord Coke there considers the word 'lunaticus' as by no means material; only classing it with 'amens, demens', etc; but he says 'non compos mentis' is the sure term. The commentary proceeds thus: 'Non compos mentis, is of four sorts: first, idiota; which from his nativity by 'a perpetual infirmity is non compos mentis; secondly, he, that by sickness, grief, or other accident, wholly loseth his memory and understanding.' Here is the very man: not born without reason: but who has lost it from sickness, grief, or other accident; for you cannot enter into the mind; to know, by what

> means it is disorganised: but you find it disorganised; and who can say, I have not a jurisdiction? There is no doubt, the moon has no influence; and there are many persons, who never have lucid intervals that come within this second description. But they must have lost their understanding to this extent; that they are not capable of the management of themselves and their affairs. Lord Coke is so far from putting the person he describes by the term 'lunaticus' in the class, that I have just noticed, that he puts that person by himself; describing him to be a man, who hath sometimes his understanding, and sometimes not; and this is the ancient law of the country. This is not a man, who has sometimes understanding, and sometimes not; his understanding is defunct: he has survived the period, that providence has assigned to the stability of his mind. In the remainder of this part of the commentary Lord Coke continues to use the phrase 'non compos mentis'.

It is clear from this passage that a person who loses the use of his mental faculty as a result of 'accident' (ie, any unforeseen event) is a person of unsound mind for the purpose of the common law. There is no reason to believe that the legislature, in using the expression 'unsound mind' in the Act and not defining it, intends to give it a less comprehensive meaning as suggested by counsel. The 1959 Act merely provided a more modern and socially acceptable expression, ie, 'mental disorder' to describe the same medical condition. Accordingly, I am of the view that if the plaintiff's mental condition is so impaired by his head injuries that he is unable to manage his own affairs, he would be within the scope of the Act for the purpose of an inquiry thereunder.

[20] Both Dr Ng Li Ling and Dr Chiam Peak Chiang have examined the defendant and they have given their professional opinions to the effect that the defendant is mentally incapable of managing his affairs and his estate and that he is mentally disordered. The defendant's dementia is described as being irreversible and incurable. I am prepared to accept the medical reports of these two good doctors. In my judgment, the defendant's severe dementia and schizophrenia has impaired his memory, intelligence, judgment and ability to care for himself and that constitutes a 'mental disorder' within the meaning assigned to it in s 2 of the Mental Health Act 2001 (Act 615).

[21] On the facts, the defendant had been found to be mentally disordered by the High Court of Singapore and the finding is corroborated by two independent psychiatric experts in the form of medical reports. It is submitted that I ought to adopt the findings of the two good doctors because such findings would give rise to practical consequences bearing in mind that the defendant's family members are financially strapped. I have done just that. It seems that any further delay would disrupt the ability of the plaintiffs' family members to ensure the defendant's continued care and welfare at the nursing home. Once I am satisfied that the defendant is incapable of managing himself and his affairs due to his mental disorder, I am then empowered to appoint 'a committee of the person and of the estate' of the defendant and order the sale of the defendant's 3/18 share in the said land for his own benefit (see ss 58, 62, 63 and 64 of the Mental Health Act 2001 (Act 615)). This is certainly in conformity with prayers (iv) to (viii) of encl 1.

[22] There is another section in the Mental Health Act 2001 (Act 615) that needs to be highlighted. It is s 70 and it is worded in this way:

Transfer of property of mentally disordered person residing outside Malaysia

70. Where any property situated in Malaysia is standing in the name of or vested in any person residing outside Malaysia, the court, if satisfied –

(a) that the person has been declared to be a mentally disordered person; and

(b) that his personal estate has been vested in a committee, curator or manager according to the laws of the place where he is residing

may order some fit and proper person to make such transfer of the property or of any part of the property to the committee, curator or manager or otherwise, and also to receive and pay over any proceeds or profits of the property as the court deems fit; and any act done in pursuance of the order shall be valid and effectual for all purposes.

[23] It is obvious that para (a) of s 70 has been fulfilled and I am satisfied that the defendant has been declared by the High Court of Singapore to be a mentally disordered person. But paragraph (b) of s 70 has not been fulfilled because the said land is not in Singapore and the order of the High Court of Singapore is only confined to the HDB flat. It appears that s 70 is inapplicable and it cannot be invoked in favour of the plaintiffs. However, I am empowered under s 58 to appoint a committee of the person and estate of the defendant and towards this end, once again, prayer (iv) of encl 1 would be relevant. Section 58 of the Mental Health Act 2001 (Act 615) enacts as follows:

Appointment of committees

58(1) If the court finds that the person who is alleged to be mentally disordered is incapable of managing himself and his affairs due to his mental disorder, the court may appoint a committee or committees of the person and of the estate of the person and may, as the court deems fit, make an order —

(a) as to the remuneration, if any, of the committee or committees out of the person's estate; or

(b) as to the giving of security by the committee or committees.

(2) Where the court finds that the person alleged to be mentally disordered is incapable of managing his affairs due to his mental disorder but is not dangerous to himself or to others, the court may appoint a committee of his estate without appointing a committee of his person.

CONCLUSION

[24] This is certainly an appropriate case for this court to exercise its discretion in granting the prayers sought for by the plaintiffs in encl 1. It is obvious that the plaintiffs and the defendant's other children have his best interests at heart despite his medical condition. Their conduct and actions thus far depict that they are doing exactly what the long title to the Mental Health Act 2001 (Act 615) seeks to achieve. It is to ensure the continuous care, treatment, rehabilitation, control and protection

of the defendant who is mentally disordered. For the reasons as adumbrated above, I make an order in terms of encl 1 forthwith. This is the judgment of this court.

Order accordingly.

Reported by Sally Kee